IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

OP.No. 4580 of 2002(T)

PETITIONERS:
----

1. **SHIVAN S/O.NARAYANAN (LATE),AGED 52 YEARS,KANIYAMOOZHIYIL HOUSE,THEKKUMBHAGAM P.O., THODUPUZHA.**

2. **CHANDRAN, S/O.NARAYANN (LATE),AGED 33 YEARS,PARAYANICKAL HOUSE,THEKKUMBHAGAM P.O., THODUPUZHA.**

3. **SIBY, S/O.CHACKO,AGED 28 YEARS, MARRIPARAMBIL,THEKUMBHAGAM P.O.,THODUPUZHA.**

BY ADV. SRI.A.X.VARGHESE.

RESPONDENTS:
----

1. **STATE OF KERALA,REPRESENTED BY CHIEF SECRETARY,SECRETARIAT,TRIVANDRUM.**

2. **DIRECTOR GENERAL OF POLICE,TRIVANDRUM.**

3. **CHANDI,SUB INSPECTOR OF POLICE, THODUPUZHA POLICE STATION,IDUKKI DISTRICT.**

4. **MURALI,SUB INSPECTOR OF POLICE, THODUPUZHA POLICE STATION,IDUKKI DISTRICT.**

5. **VIJAYAN,HEAD CONSTABLE,THODUPUZHA POLICE STATION,IDUKKI DISTRICT.**

6. **MOHAMMED,POLICE CONSTABLE,THODUPUZHA POLICE STATION,IDUKKI DISTRICT.**

O.P. NO. 4580/2002:

7. AUGUSTIN THOMAS,POLICE CONSTABLE,
THODUPUZHA POLICE STATION,IDUKKI DISTRICT.

8. P.K.KESAVAN S/O.KUTTY (LATE)
AGED 50 YEARS,PARAYANICKAL HOUSE,
THEKKUMBHAGAM P.O.,THODUPUZHA,IDUKKI DISTRICT.

BY ADV. SRI.A.MOHAMMED FOR R3 TO R8,
GOVT. PLEADER SMT. N. SUDHA DEVI FOR R1 & R2.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS. 8173/2002 & 20154/2002 IN O.P. NO. 4580/2002

DISMISSED

18/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CERTIFICATE ISSUED BY THE EXCELSION HOSPITAL TO THE P.1. DTD. 15/10/2001.

EXT.P.2: COPY OF THE CERTIFICATE ISSUED BY THE CHAZHIKATTU HOSPITAL (P) LTD., THODUPUZHA TO THE P.2. DTD. 12/10/2001.

EXT.P.3: COPY OF THE CERTIFICATE ISSUED BY THE EXCELSION HOSPITAL TO THE P.3. DTD. 15/10/2001.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 22/01/2002 TO THE R.1.

EXT.P.4.A: COPY OF THE POSTAL RECEIPT.

RESPONDENT'S EXHIBIT:

EXT.R4.A: COPY OF THE JUDGMENT IN C.C. 1407/04 DT. 27/03/07.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

- -

O.P.NO.4580 of 2002-T

- -

Dated this the 18th day of August, 2007

JUDGMENT

The petitioners have approached this court mainly claiming compensation of an amount of Rs.50,000/- from respondents 3 to 8. The complaint of the petitioners is that in a dispute relating to a well and construction of a compound wall which arose some time in September 2001, the 8th respondent filed a complaint to the Thodupuzha Police Station. Two police constables came to enquire into the complaint and the police arrested the petitioners. It is also stated that even though their innocence was pleaded before the police, due to the inducement of the 8th respondent, they were tortured by the police. The apparent complaint is that the injuries sustained by them are liable to be compensated in this proceedings.

2. The 4th respondent has filed a counter affidavit wherein Ext.R4(a) judgment of the Judicial Magistrate of First Class, Thodupuzha in C.C. No.1407/2004 is produced. That was based on a complaint filed by the second petitioner herein alleging commission of offence punishable under Sections 323 and 324 read with Section 34 I.P.C. against the accused. The learned Magistrate acquitted the accused after considering the evidence

adduced in the case.

3. The issue whether compensation can be claimed in these proceedings, is well settled by various decisions of the Supreme Court. It was held in ((2006) 3 SCC 178 that in proceedings under Article 226 of the Constitution of India, this court will be justified in granting compensation only if there is concrete medical and other corroborative evidence to prove the injury sustained by the parties. It was also held that merely on the basis of allegations, this court cannot grant compensation.

4. In the light of Ext.R4(a) judgment, I am not satisfied that this court will be justified in granting compensation. Learned counsel for the petitioners points out that he has got a remedy to challenge Ext.R4(a) in appeal before this court. The petitioners will be free to challenge the same in appropriate proceedings.

The original petition is closed.

(T.R. Ramachandran Nair, Judge.)

kav/

T.R. Ramachandran Nair, J.

- -

O.P. No.4580 of 2002-T

- -

JUDGMENT

18th August, 2007.